

HUSCH BLACKWELL

Christopher A. Smith
Partner

190 Carondelet Plaza, Suite 600
St. Louis, MO 63105
Direct: 314.480.1836
Fax: 314.480-1505
chris.smith@huschblackwell.com

May 12, 2022

VIA ECF

The Honorable Jesse M. Furman
United States District Court
Southern District of New York
40 Centre Street, Room 2202
New York, NY 10007

Re: *New York City Transit Authority v. Express Scripts, Inc.*,
No. 1:19-cv-05196-JMF (S.D.N.Y.)

Dear Judge Furman:

Plaintiff New York City Transit Authority (“NYCTA”) and Defendant Express Scripts, Inc. (“Express Scripts”) write to jointly request extensions of the current case deadlines due to key witness health issues.

The Court entered an Order (Doc. #152) that reopened discovery to allow Express Scripts to subpoena Vince Kozlowski, who had submitted a declaration in support of NYCTA’s damages calculations in NYCTA’s Opposition to Express Scripts’ Motion for Summary Judgment. The Court previously extended the deadline to complete damages discovery to May 20, 2022. (Doc. # 157).

On May 11, 2022, counsel for Mr. Kozlowski informed the parties that Mr. Kozlowski was seriously ill and not presently able to sit for a deposition. Mr. Kozlowski’s counsel was *hopeful* (but not 100% certain) that he would be healthy enough to appear in late May or early June.

The parties are currently working together to address the privilege issues previously raised with the court, and AON made its production of non-privileged materials on May 11, 2022. Although the parties remain optimistic that, with cooperation, the remaining discovery issues can be resolved, Mr. Kowalski’s deposition cannot be completed by the May 20, 2022 deadline because of his medical unavailability.

The parties have scheduled a mediation for June 17, 2022. It is Express Scripts’ sincere belief that completion of the damages discovery, including Mr. Kozlowski’s deposition, is essential to a meaningful mediation. If Mr. Kozlowski’s health does not allow him to be deposed in late May or early June, it is possible that the mediation date may need to be postponed as well.

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For these reasons, NYCTA and Express Scripts jointly and respectfully request that the Court extend the deadlines set-forth in the Court's April 12, 2022 order by sixty (60) days (both the deadline to complete the damages discovery and the deadline to submit pre-trial materials). This extension will allow the parties sufficient time to depose Mr. Kozlowski when his health allows it, address the remaining discovery issues, and complete mediation.

Respectfully submitted,

/s/ *Christopher A. Smith*
Christopher A. Smith

Respectfully submitted,

/s/ *Maximillian S. Shifrin*
Maximillian S. Shifrin

Application GRANTED. The deadline to complete damages discovery, pursuant to the Court's March 18, 2022 Order, *see* ECF No. 152, is hereby extended to **July 19, 2022**. The parties' deadline to submit pretrial filings is hereby extended to **August 19, 2022**. No later than **August 10, 2022**, the parties shall submit to the Court a joint status update regarding mediation efforts. The Clerk of Court is directed to terminate ECF No. 161.

SO ORDERED.



May 13, 2022